

Department of Health  
Notice of Rulemaking Hearing  
Board of Optometry  
Division of Health Related Boards

There will be a hearing before the Tennessee Board of Optometry to consider the promulgation of amendments to rules pursuant to T.C.A. §§ 4-5-202, 4-5-204, and 63-8-112. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4-5-204 and will take place in the Cumberland Room of the Cordell Hull Building located at 425 Fifth Avenue North, Nashville, TN at 3:30 p.m. (CST) on the 9th day of February, 2006.

Any individuals with disabilities who wish to participate in these proceedings (review these filings) should contact the Department of Health, Division of Health Related Boards to discuss any auxiliary aids or services needed to facilitate such participation or review. Such initial contact may be made no less than ten (10) days prior to the scheduled meeting date (the date such party intends to review such filings), to allow time for the Division to determine how it may reasonably provide such aid or service. Initial contact may be made with the ADA Coordinator at the Division of Health Related Boards, First Floor, Cordell Hull Building, 425 Fifth Avenue North, Nashville, TN 37247-1010, (615) 532-4397.

For a copy of the entire text of this notice of rulemaking hearing contact:

Jerry Kosten, Regulations Manager, Division of Health Related Boards, 425 Fifth Avenue North, First Floor, Cordell Hull Building, Nashville, TN 37247-1010, (615) 532-4397.

Substance of Proposed Rules

Amendments

Rule 1045-2-.02, Licensure Process, is amended by deleting paragraph (3) in its entirety and substituting instead the following language, so that as amended, the new paragraph (3) shall read:

- (3) An applicant shall cause to be submitted directly to the Board administrative office a certified transcript mailed by an accredited college or school of optometry which clearly shows the degree and the date received. The college or school of optometry must be accredited by one (1) of the following:
  - (a) Accreditation Council on Optometric Education (ACOE)
  - (b) National Commission on Accrediting
  - (c) United States secretary of education

Authority: T.C.A. § 4-5-202, 4-5-204, 63-8-112, and 63-8-115.

Rule 1045-2-.07, Diagnostic and Therapeutic Certification, is amended by deleting paragraph (1) in its entirety and substituting instead the following language, so that as amended, the new paragraph (1) shall read:

- (1) It is the intent of the Board that all applicants for licensure as optometrists attain the highest level of licensure available under the law including diagnostic and therapeutic certification as provided in T.C.A. §§63-8-102(12)(E) and 63-8-112(4). Attaining therapeutic certification must include attaining certification to use pharmaceutical agents by injection.

Authority: T.C.A. § 4-5-202, 4-5-204, 63-8-102, 63-8-112, and 63-8-115.

Rule 1045-2-.13 Optometric Professional Corporations and Optometric Professional Limited Liability Companies, is amended by deleting paragraphs (1), (2), and (3) in their entirety and substituting instead the following language, and is further amended by adding the following language as new paragraph (5), so that as amended, the new paragraphs (1), (2), (3), and (5) shall read:

- (1) Optometric Professional Corporations (OPC) - Except as provided in this rule Optometric Professional Corporations shall be governed by the provisions of Tennessee Code Annotated, Title 48, Chapter 101, Part 6.
  - (a) Filings – An OPC need not file its Charter or its Annual Statement of Qualifications with the Board.
  - (b) Ownership of Stock - With the exception of the health care professional combinations specifically enumerated in Tennessee Code Annotated, Section 48-101-610 only the following may form and own shares of stock in a foreign or domestic OPC doing business in Tennessee:
    1. Optometrists licensed pursuant to Tennessee Code Annotated Title 63, Chapter 8 or licensed in another state; and/or
    2. A foreign or domestic general partnership, OPC or OPLLC in which all partners, shareholders, members or holders of financial rights are either:
      - (i) Optometrists licensed pursuant to Tennessee Code Annotated, Title 63, Chapter 8 to practice optometry in Tennessee or optometrists licensed by other states, or composed of entities which are directly or indirectly owned by such licensed optometrists; and/or

- (ii) Professionals authorized by Tennessee Code Annotated §§ 48-101-610, 48-248-401, or 48-249-1109 to either own shares of stock in an OPC or be a member or holder of financial rights in an OPLLC; and/or
  - (iii) A combination of professionals authorized by subparts (i) and (ii).
- (c) Officers and Directors of Optometric Professional Corporations -
  - 1. All, except the following officers, must be persons who are eligible to form or own shares of stock in an optometric professional corporation as limited by T.C.A. § 48-101-610 (d) and subparagraph (1) (b) of this rule:
    - (i) Secretary;
    - (ii) Assistant Secretary;
    - (iii) Treasurer; and
    - (iv) Assistant Treasurer.
  - 2. With respect to members of the Board of Directors, only persons who are eligible to form or own shares of stock in an optometric professional corporation as limited by T.C.A. Section 48- 101-610 (d) and subparagraph (1) (b) of this rule shall be directors of an OPC.
- (d) Practice Limitations
  - 1. Engaging in, or allowing another optometrist incorporator, shareholder, officer, or director, while acting on behalf of the OPC, to engage in, optometric practice in any area of practice or specialty beyond that which is specifically set forth in the charter may be a violation of Tennessee Code Annotated, Section 63-8-120 (2).
  - 2. Nothing in these rules shall be construed as prohibiting any health care professional licensed pursuant to Tennessee Code Annotated, Title 63 from being an employee of or a contractor to an OPC.
  - 3. Nothing in these rules shall be construed as prohibiting an OPC from electing to incorporate for the purposes of rendering professional services within two (2) or more professions or for any lawful business authorized by the Tennessee Business

Corporations Act so long as those purposes do not interfere with the exercise of independent optometric judgment by the optometrist incorporators, directors, officers, shareholders, employees or contractors of the OPC who are practicing optometry as defined by Tennessee Code Annotated, Section 63-8-102 (12).

4. Nothing in these rules shall be construed as prohibiting an optometrist from owning shares of stock in any type of professional corporation other than an OPC so long as such ownership interests do not interfere with the exercise of independent optometric judgment by the optometrist while practicing optometry as defined by Tennessee Code Annotated, Section 63-8-102 (12).
- (2) Optometric Professional Limited Liability Companies (OPLLC) - Except as provided in this rule Optometric Professional Limited Liability Companies shall be governed by either the provisions of Tennessee Code Annotated, Title 48, Chapters 248 or 249.
- (a) Filings - Articles filed with the Secretary of State shall be deemed to be filed with the Board and no Annual Statement of Qualifications need be filed with the Board.
  - (b) Membership - With the exception of the health care professional combinations specifically enumerated in Tennessee Code Annotated, Sections 48-248-401 or 48-249-1109 only the following may be members or holders of financial rights of a foreign or domestic OPLLC doing business in Tennessee:
    1. Optometrists licensed pursuant to Tennessee Code Annotated Title 63, Chapter 8 or licensed in other states; and/or
    2. A foreign or domestic general partnership, OPC or OPLLC in which all partners, shareholders, members or holders of financial rights are either:
      - (i) Optometrists licensed pursuant to Tennessee Code Annotated Title 63, Chapter 8 to practice optometry in Tennessee or optometrists licensed by other states or composed of entities which are directly or indirectly owned by such licensed optometrists; and/or
      - (ii) Professionals authorized by Tennessee Code Annotated, Sections 48-101-610, 48-248-401, or 48-249-1109 to either own shares of stock in an OPC or be a member or holder of financial rights in an OPLLC; and/or

- (iii) A combination of professionals authorized by subparts (i) and (ii).

(c) Managers, Directors or Governors of an OPLLC

1. All, except the following managers, must be persons who are eligible to form or become members or holders of financial rights of an optometric professional limited liability company as limited by T.C.A. § 48-248-401 and subparagraph (2) (b) of this rule:
  - (i) Secretary
  - (ii) Treasurer
2. Only persons who are eligible to form or become members or holders of financial rights of an optometric professional limited liability company as limited by T.C.A. § 48-248-401 and subparagraph (2) (b) of this rule shall be allowed to serve as a director, or serve on the Board of Governors of an OPLLC.

(d) Practice Limitations

1. Engaging in, or allowing another optometrist member, officer, manager, director, or governor, while acting on behalf of the OPLLC, to engage in, optometric practice in any area of practice or specialty beyond that which is specifically set forth in the articles of organization may be a violation of Tennessee Code Annotated, Sections 63-8-120 (2).
2. Nothing in these rules shall be construed as prohibiting any health care professional licensed pursuant to Tennessee Code Annotated, Title 63 from being an employee of or a contractor to an OPLLC.
3. Nothing in these rules shall be construed as prohibiting an OPLLC from electing to form for the purposes of rendering professional services within two (2) or more professions or for any lawful business authorized by the Tennessee Business Corporations Act so long as those purposes do not interfere with the exercise of independent optometric judgment by the optometrist members or holders of financial rights, governors, officers, managers, employees or contractors of the OPLLC who are practicing optometry as defined by Tennessee Code Annotated, Section 63-8-102 (12).

4. Nothing in these rules shall be construed as prohibiting An optometrist from being a member of any type of professional limited liability company other than an OPLLC so long as such membership interests do not interfere with the exercise of independent optometric judgment by the optometrist while practicing optometry as defined by Tennessee Code Annotated, Section § 63-8-102 (12).
  5. All OPLLCs formed in Tennessee pursuant to Tennessee Code Annotated, Sections 48-248-104 or 48-249-101, et seq., to provide services only in states other than Tennessee shall annually file with the Board a notarized statement that they are not providing services in Tennessee.
- (3) Dissolution - The procedure that the Board shall follow to notify the attorney general that an OPC or a OPLLC has violated or is violating any provision of Title 48, Chapters 101, 248 or 249, shall be as follows but shall not terminate or interfere with the secretary of state's authority regarding dissolution pursuant to Tennessee Code Annotated, Sections 48-101-624 or 48-248-409.
- (a) Service of a written notice of violation by the Board on the registered agent of the OPC and/or OPLLC or the secretary of state if a violation of the provisions of Tennessee Code Annotated, Title 48, Chapters 101, 248 or 249 occurs.
  - (b) The notice of violation shall state with reasonable specificity the nature of the alleged violation(s).
  - (c) The notice of violation shall state that the OPC and/or OPLLC must, within sixty (60) days after service of the notice of violation, correct each alleged violation or show to the Board's satisfaction that the alleged violation(s) did not occur.
  - (d) The notice of violation shall state that, if the Board finds that the OPC and/or OPLLC is in violation, the attorney general will be notified and judicial dissolution proceedings may be instituted pursuant to Tennessee Code Annotated, Title 48.
  - (e) The notice of violation shall state that proceedings pursuant to this section shall not be conducted in accordance with the contested case provisions of the Uniform Administrative Procedures Act, compiled in Title 4, Chapter 5 but that the OPC and/or OPLLC, through its agent(s), shall appear before the Board at the time, date, and place as set by the Board and show cause why the Board should not notify the attorney general and reporter that the organization is in violation of the Act or these rules. The Board shall enter an order that states with reasonable particularity the facts describing

each violation and the statutory or rule reference of each violation. These proceedings shall constitute the conduct of administrative rather than disciplinary business.

- (f) If, after the proceeding the Board finds that an OPC and/or OPLLC did violate any provision of Title 48, Chapters 101, 248, and/or 249 or these rules, and failed to correct said violation or demonstrate to the Board's satisfaction that the violation did not occur, the Board shall certify to the attorney general and reporter that it has met all requirements of either Tennessee Code Annotated, Sections 48-101-624 (1) - (3) and/or 48-248-409 (1)-(3) and/or 48-249-101, et seq.
- (5) The authority to own shares of stock or be members or holders of financial rights in an OPC or an OPLLC granted by statute or these rules to professionals not licensed in this state shall in no way be construed as authorizing the practice of any profession in this state by such unlicensed professionals.

Authority: T.C.A. §§4-5-202, 4-5-204, 48-101-605, 48-101-608, 48-101-610, 48-101-618, 48-101-624, 48-101-628, 48-101-629, 48-101-630, 48-248-104, 48-248-202, 48-248-401, 48-248-404, 48-248-409, 48-248-501, 48-248-601, 48-248-602, 48-248-603, 48-249-101, et seq., 63-8-102, 63-8-112, 63-8-115, and 63-8-120.

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Contact who can answer questions concerning this notice of rulemaking hearing, technical contact for disk acquisition, and person who will approve final copy for publication: Jerry Kosten, Regulations Manager, Division of Health Related Boards, First Floor, Cordell Hull Building, 425 Fifth Avenue North, Nashville, TN 37247-1010, (615) 532-4397.

I certify that this is an accurate and complete representation of the intent and scope of rulemaking proposed by the Tennessee Board of Optometry.

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Robbie H. Bell, Director  
Health Related Boards

Subscribed and sworn to before me this the 30th day of November, 2005.

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Notary Public

My commission expires on the 25th day of March, 2006.

The notice of rulemaking set out herein was properly filed in the Department of State on the \_\_\_\_ day of \_\_\_\_\_, 2005.

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Riley C. Darnell  
Secretary of State

By: \_\_\_\_\_